No. 98-170

(2)

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1998

KEYSTONE COCA-COLA BOTTLING CO.,
Petitioner,

v.

PENNSYLVANIA UNEMPLOYMENT
COMPENSATION BOARD OF REVIEW,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO
THE COMMONWEALTH COURT OF PENNSYLVANIA

RESPONDENT'S BRIEF IN OPPOSITION

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13 pp

QUESTION PRESENTED FOR REVIEW

Did the Commonwealth Court of Pennsylvania properly decide that federal labor law does not preempt the provision of Pennsylvania's Unemployment Compensation Law that allows locked out employees to collect unemployment benefits?

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STATEMENT OF THE CASE

This matter involves the award of benefits by Pennsylvania's Unemployment Compensation Board of Review to employees of Keystone Coca-Cola Bottling Co. (Keystone) who were involved in a labor dispute. The employees were, at all relevant times, represented by the International Brotherhood of Teamsters Local 401 (Union).

Keystone and the Union were operating under a collective bargaining agreement with an expiration date of September 10, 1991. (*See* App. at 4a to the Petition for Writ of Certiorari (Petition))[1]. On August 26, 1991, Keystone and the Union agreed to extend the collective bargaining agreement beyond its expiration date. (App. at 4a, 18a). They agreed that either party could terminate the extension by providing seventy-two hours notice. (App. at 4a-5a, 18a). On March 18, 1994, after more than two years of operation under the expired agreement, Keystone notified the Union that it intended to terminate the extension. (App. at 5a, 19a).

After exercising its right to terminate, Keystone's vice-president informed a Union representative that Keystone had a new proposal to resolve the bargaining impasse. (App. at 5a, 21a). Keystone's proposal, among other things, would have resulted in a reduction of its monthly contribution to the employees' pension plan. (App. at 5a, 22a). Keystone represented that the pension provision of its proposal had been approved by the Union's pension fund administrator. (App. at 5a, 22a). Based upon Keystone's representations, the Union presented the proposal to its members, who voted to ratify it by a vote of forty-one to forty. (App. at 5a, 22a). Before a new agreement could be signed by Union representatives, certain procedural issues involving ratification needed to be resolved by the Union's international office. (App. at 5a, 23a). In the interim, the Union discovered that its pension fund administrator had not approved Keystone's pension provision. (App. at 5a, 24a). In fact, the administrator expressly disapproved of the contribution reduction because of the adverse impact it

[1] Petitioner's Appendix will be cited as (App. at _____ a).

would have on the employees. (App. at 5a-6a, 24a). Thereafter, the Union informed Keystone that there was no ratified agreement, but that the Union was willing to continue working under the terms of the expired agreement. (App. 25a). Despite the Union's offer, Keystone unilaterally implemented the 1994 proposal that "was never properly and legally ratified, was never reduced to formal writing, and was never signed by the parties." (App. at 34a).

In early November 1994, the Union reiterated its offer to work under the expired agreement. (App. at 26a-27a). Keystone, however, rejected the Union's offer. (App. at 27a-28a). Thereafter, on November 21, 1994, a work stoppage began and the employees filed for unemployment compensation benefits. (App. at 29a-30a).

The Pennsylvania Unemployment Compensation Board of Review determined that Keystone had locked out the employees and that they were, therefore, eligible for unemployment compensation in accordance with Pennsylvania's Unemployment Compensation Law. (App. at 17a-36a). The Pennsylvania Commonwealth Court affirmed the Board's decision (App. at 3a-16a), and the Pennsylvania Supreme Court refused to hear Keystone's appeal (App. at 1a).

REASONS FOR DENYING THE WRIT

Keystone fails to provide any compelling reasons for this Court to grant the writ of certiorari. The Commonwealth Court of Pennsylvania's decision represents a proper application of well-settled law. Keystone asserts that the lockout provision of the Pennsylvania Unemployment Compensation Law is preempted by the National Labor Relations Act (NLRA).[2]

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[2] The lockout provision of the Pennsylvania Unemployment Compensation Law appears in Section 402(d) of the Act. Section 402(d) provides, in relevant part, as follows:

> An employe shall be ineligible for compensation for any week-
>
> . . . .
>
> (d) In which his unemployment is due to a stoppage of work, which exists because of a labor dispute (other than a lock-out) at the factory, establishment or other premises at which he is or was last employed. . . .

Act of June 30, 1947, No. 493 P.L. 1186, *as amended*, PA. STAT. ANN. tit. 43 § 802(d) (West 1991).

This assertion not only ignores Congress' intent in enacting the NLRA and the Social Security Act, but also this Court's decision in *New York Tel. Co. v. New York State Dep't of Labor,* 440 U.S. 519 (1979). Thus, it is not surprising that Keystone fails to reference any conflict among courts that have decided this preemption question.

I. THIS COURT'S GUIDANCE IS NOT NECESSARY TO FURTHER EXPLAIN THE BROAD AUTHORITY CONGRESS GRANTED STATES TO IMPLEMENT AND ADMINISTER UNEMPLOYMENT COMPENSATION PROGRAMS.

In analyzing any federal preemption question "[t]he purpose of Congress is the ultimate touchstone." *Metropolitan Life Ins. Co. v. Massachusetts,* 471 U.S. 724, 747 (1985). In enacting the Social Security Act, Congress intended to provide a substitute for wages lost during a period of unemployment that was not the fault of the employee. *See California Dep't of Human Resources Dev. v. Java,* 402 U.S. 121 (1971). Pennsylvania's Unemployment Compensation Law is wholly consistent with that intent.

Both Congress and this Court have recognized that the states have broad authority to implement and administer unemployment compensation programs. *New York Tel. Co. v. New York State Dep't of Labor,* 440 U.S. 519 (1979). In *New York Telephone,* this Court decided that the NLRA did not preempt unemployment compensation statutes that allow benefits to be paid to employees engaged in a labor dispute. *Id.* In reaching this conclusion, this Court relied extensively upon the legislative history of the National Labor Relations Act of 1935 (NLRA), 49 Stat. 449 (1935), *as amended,* 29 U.S.C. § 151 *et seq.* and the Social Security Act of 1935, 49 Stat. 620 (1935), *as amended*, 42 U.S.C. § 301 *et seq.* finding that Congress intended the states to have broad freedom in setting up unemployment compensation programs. *New York Telephone* at 537 (plurality opinion). In the nineteen years since this

Court's decision in *New York Telephone,* Congress has done nothing to alter this conclusion. *See* 26 U.S.C. §§ 3301-3311; 29 U.S.C. §§ 151-158; 42 U.S.C § 503.

From its inception, this nation's unemployment compensation system has had its foundation imbedded in principles of cooperative federalism. *See Ohio Bureau of Employment Servs. v. Hodory,* 431 U.S. 471, 483 (1977); *see also Alessi v. Raybestos-Manhattan, Inc.,* 451 U.S. 504, 522 (1981) (recognizing that analysis of a preemption question "must be guided by respect for the separate spheres of government authority preserved in our federalist system."). In this regard, the unemployment compensation system provides each state with wide latitude to enact its own eligibility criteria. *See Hodory,* 431 U.S. at 488-89.

Moreover, this Court's decision in *New York Telephone* makes it abundantly clear that states have the right to decide when to pay benefits to workers who are unemployed as a result of a labor dispute. By leaving this aspect of unemployment compensation eligibility to the states, Congress has allowed states to award benefits to striking workers in some circumstances and to deny them in others. *Compare, New York Tel. Co.,* 440 U.S. 519 (1979) (a state can grant benefits to striking workers without regard to whether labor or management caused the work stoppage) *with Ohio Bureau of Employment Servs. v. Hodory,* 431 U.S. 471 (1977) (a state can deny benefits to workers unemployed as a result of a labor dispute). As authorized by Congress, Pennsylvania's General Assembly has chosen to deny unemployment compensation benefits to workers who have gone out on strike and to grant benefits to workers who have been locked out. PA. STAT. ANN. tit. 43 § 802(d) (West 1991).

A. Keystone Fails to Set Forth Any Precedent Holding That an Unemployment Compensation Statute Similar to Pennsylvania's is Preempted by the NLRA.

In *New York Telephone,* six justices agreed that Congress gave the states the authority to decide whether and in what circumstances to award unemployment compensation benefits

to workers embroiled in labor disputes.[3] Keystone's characterization of *New York Telephone* as an "unsettled pronouncement" is simply inaccurate. *See* Petition at 11.

In *Duer Spring & Mfg. Co. v. Pennsylvania Dep't of Labor & Indus.*, 906 F.2d 968 (3d Cir. 1990), the United States Court of Appeals for the Third Circuit applied the rationale of *New York Telephone* to the specific lockout provision at issue in this case. Consistent with this Court's decision in *New York Telephone*, the Third Circuit recognized that Congress intended "to give 'the several States . . . broad freedom in setting up *the types of unemployment compensation* that they wish.'" [4] *Duer Spring*, 906 F.2d at 971 (quoting *New York Tel. Co.*, 440 U.S. 519, 537 (1979)) (emphasis in original). Thus, the Third Circuit concluded that for purposes of federal preemption analysis, Pennsylvania's statute could not be distinguished from the statute analyzed in *New York Telephone*. *Id.*

Furthermore, Pennsylvania courts utilizing this Court's reasoning in *New York Telephone* have consistently held that

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[3] Justice Stevens, joined by then-Justice Rehnquist and Justice White, explained that because Congress had rejected the suggestion that states be prohibited from providing benefits to strikers, it was undeniably aware of the possible impact of unemployment compensation on the bargaining process but "decided to tolerate a substantial measure of diversity." *New York Tel. Co.*, 440 U.S. at 546. In a separate concurring opinion, Justice Brennan agreed, based on the legislative history of the NLRA and the Social Security Act. *Id.* at 546-47. Finally, Justice Blackmun, joined by Justice Marshall, concurred "that Congress [had] decided to tolerate any interference caused by an unemployment compensation statute. . . ." *Id.* at 549.

[4] The Ninth Circuit, in *Hawaiian Telephone*, recognized that Congress intended to grant broad authority to the states to award unemployment compensation benefits. *Hawaiian Tel. Co. v. Hawaii Dep't of Labor & Indus. Relations*, 614 F.2d 1197 (9th Cir.), *cert. denied*, 446 U.S. 984 (1980). Furthermore, the Eighth Circuit has acknowledged that the freedom to create an unemployment compensation system "includes the State's right to establish eligibility criteria." *United Steelworkers of America v. Johnson*, 830 F.2d 924, 927 (8th Cir. 1987). Nevertheless, because the South Dakota officials denied benefits to "all union employees as a class . . . based on their union membership," the court held that the statute as applied conflicted with Section 7 of the NLRA. *Id.* at 926, 929. In this case, however, there is no allegation that Pennsylvania's statute infringes on employees' rights contained in Section 7 of the NLRA.

the lockout provision of the Pennsylvania Unemployment Compensation Law is not preempted by federal labor law.[5] *Penflex, Inc. v. Bryson*, 485 A.2d 359, 369 (Pa. 1984); *Schulmerich Carillons, Inc. v. Unemployment Compensation Bd. of Review*, 623 A.2d 921, 924 (Pa. Commw.), *appeal denied*, 631 A.2d 1013 (Pa. 1993), *cert. denied*, 510 U.S. 1113 (1994). Courts have had no difficulty in recognizing that Congress made a conscious decision to permit state unemployment compensation programs to grant benefits to workers involved in a work stoppage even if the grant of benefits alters the balance of bargaining power. *See Duer Spring & Mfg. Co. v. Pennsylvania, Dep't of Labor & Indus.*, 906 F.2d 968 (3d Cir. 1990); *United Steelworkers of America v. Johnson*, 830 F.2d 924 (8th Cir. 1987); *Hawaiian Tel. Co. v. Hawaii Dep't of Labor & Indus. Relations*, 614 F.2d 1197 (9th Cir.), *cert. denied*, 446 U.S. 984 (1980). Accordingly, there is no need for this Court to grant certiorari to further explain the broad latitude granted to the states by Congress in the area of unemployment compensation.

B. Keystone's Argument is Fatally Flawed Because the Pennsylvania Unemployment Compensation Law Does Not Provide for a Regulatory or Judicial Remedy for Conduct Prohibited by the NLRA.

Keystone asserts that the unemployment compensation statutes of a number of states, including Pennsylvania, are in conflict with the NLRB's primary jurisdiction. Keystone seeks to rely on this Court's decision in *San Diego Bldg. Trades Council v. Garmon*, 359 U.S. 236 (1959) and its progeny. Keystone's reliance is misplaced.

The well-established *Garmon* rule prevents states from setting forth standards of conduct inconsistent with the substantive requirements of the NLRA and also from "providing their own regulatory or judicial remedies for conduct prohib-

[5] One year prior to this Court's landmark decision in *New York Telephone*, the Pennsylvania Supreme Court decided that Pennsylvania's lockout provision was not preempted by the NLRA. *See Unemployment Compensation Bd. of Review v. Sun Oil Co.*, 383 A.2d 519 (Pa.), *appeal dismissed*, 440 U.S. 977 (1979), *reh'g denied* 441 U.S. 968 (1979).

ited or arguably prohibited by the Act." *See Wisconsin Dep't of Indus. v. Gould, Inc.*, 475 U.S. 282, 286 (1986) (quoting *San Diego Bldg. Trades Council v. Garmon*, 359 U.S. at 247). Keystone, however, fails to specifically articulate how Pennsylvania's unemployment compensation law regulates or prohibits any conduct subject to the regulatory jurisdiction of the NLRB.

In fact, Pennsylvania's Unemployment Compensation Law does not regulate or prohibit any labor practice, nor does the statute provide judicial or administrative remedies for conduct prohibited by the NLRA. *See Duer Spring*, 906 F.2d 968, 971 (3d Cir. 1990). The Act does not allow state officials to enjoin or take punitive measures against employees or employers for any conduct engaged in during labor negotiations. *See* PA. STAT ANN. tit. §§ 751-914 (West 1991, 1992 & Supp. 1998). Rather, the Pennsylvania Unemployment Compensation Law merely seeks to provide economic security to workers who become unemployed through no fault of their own. *See Philco Corp. v. Unemployment Compensation Bd. of Review*, 242 A.2d 454, 455 (Pa. 1968); PA. STAT. ANN. tit. 43 § 752 (West 1992). "Since the purpose of our unemployment compensation system is to compensate an individual when work has been denied him through no fault of his own, logically the test of whether a work stoppage resulted from a strike or a lock-out requires us to determine which side, union or management, first refused to continue operations. . . ." *Local 730 v. Unemployment Compensation Bd. of Review*, 480 A.2d 1000, 1003 (Pa. 1984) (quoting *Philco Corp. v. Unemployment Compensation Bd. of Review*, 242 A.2d 454, 455 (1968)).

Pennsylvania's Unemployment Compensation Law is consistent with the Congressional mandate contained in the Social Security Act, *Java*, 402 U.S. at 130, and this Court's decision in *New York Telephone*. Keystone's attempt to challenge Pennsylvania's authority to decide eligibility for unemployment compensation benefits is legally unsupported and, therefore, need not be considered by this Court.

CONCLUSION

For the foregoing reasons, the Pennsylvania Unemployment Compensation Board of Review respectfully requests that the Petition for Writ of Certiorari be denied.

Respectfully submitted,

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